



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

**[OH-262-FOR; Docket ID: OSM-2019-0006
S1D1S SS08011000 SX064A000 190S180110;
S2D2S SS08011000 SX064A000 19XS501520]**

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Ohio regulatory program, hereinafter the Ohio program, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio seeks to amend its program by revising a definition involving the transfer, assignment, or sale of permit rights. This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments, on the amendment and the procedures that we

will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this request until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the request on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. OH-262-FOR, Docket ID: OSM-2019-0006, by any of the following methods:

- Mail/Hand Delivery: Mr. Ben Owens, Chief, Pittsburgh Field Division
Office of Surface Mining Reclamation and Enforcement
3 Parkway Center, Pittsburgh, Pa 15220
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Ohio program, this request, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the request by contacting OSMRE's Pittsburgh Field Division or the full text of the request is available for you to read at www.regulations.gov.

Mr. Ben Owens, Chief, Pittsburgh Field Division
Office of Surface Mining Reclamation and Enforcement
3 Parkway Center
Pittsburgh, PA 15220
Telephone: (412) 937-2827
Email: bowens@osmre.gov

In addition, you may review a copy of the request during regular business hours at the following location:

Mr. Larry E. Erdos, Chief, Division of Mineral Resources Management
Ohio Department of Natural Resources
2045 Morse Rd., Building H-2
Columbus, OH 43229-6693

Telephone: (614) 265-6633

Email: lanny.erdos@dnr.state.oh.us

FOR FURTHER INFORMATION CONTACT:

Mr. Ben Owens, Chief, Pittsburgh Field Division

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center

Pittsburgh, PA 15220

Telephone: (412) 937-2827

Email: *bowens@osmre.gov*

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description of the Request
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of

surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find additional background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval in the August 10, 1982, **Federal Register**, 47 FR 34688. You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11 and 935.15.

II. Description of the Request

By letter dated April 11, 2019, Ohio sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) that involves the regulatory definition of “transfer, assignment, or sale of permit rights” related to coal mining operations (Administrative Record No. OH-2198). Ohio seeks to add regulatory language at Chapter 1501:13-1-02, *Definitions*, section (VVVVVV) of the Ohio Administrative Code, which currently defines the term as “a change of a permittee, including, but not limited to, any fundamental legal change in the structure or nature of a permittee, or a name change.” With this amendment, Ohio seeks to expand the definition to include a change in the ownership and operational control of a permittee to a person who has not held a permit issued under Chapter 1513, *Coal Surface Mining*, of the Ohio Revised Code (ORC) for a

period of not less than five years where the existence and name of the permittee remain the same. Ohio states that this change is intended to prevent a person who is not eligible to participate in the bond pool under section 1513.08(C)(2) of the ORC from gaining access to the bond pool through a change of ownership and operational control that does not change the existence and name of the permittee. Ohio states that requiring such a person to apply for a transfer, assignment, or sale of permit rights will assure that all performance security requirements are met.

The full text of the amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether this amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the request during the 30-day comment period, they should be specific, confined to issues pertinent to the request, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence our decision will be those that either involve personal experience or include citations to and analyses of SMCRA, its

legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible,

that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563 – Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 2019.

Thomas D. Shope, Regional Director

Appalachian Region

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